

Dear Mr. Holmes:

You have requested my opinion as to whether an operator of a liquor establishment who has been issued a state retail liquor license in accordance with Section 4-403, Revised Codes of Montana, 1947, but who has not obtained the county license as authorized by Section 4-430, Revised Codes of Montana, 1947, may be prosecuted under the provisions of Section 4-439, Revised Codes of Montana, 1947.

Section 4-430, Revised Codes of Montana, 1947, reads as follows:

"City And County Licenses—Fees. The city council of any incorporated town or city, or the county commissioners outside of any incorporated town or city, may provide for the issuance of licenses to persons to whom a license has been issued under the provisions of this act, and may fix license fees thereof, not to exceed a sum equal to fifty per cent (50%) of the license fee collected by the board from such license under this act."

The statute gives authority to the counties to grant licenses other than those granted by the State Liquor Control Board, however, the provisions are not mandatory. The penalty provision relative to the control of liquor statutes is Section 4-439, Revised Codes of Montana, 1947, and reads:

"Penalty For Violating Act—Revocation of License. Any person violating any of the provisions of this act, shall upon conviction thereof, be deemed guilty of a misdemeanor and punishable by such fine or imprisonment, or both, as provided by law, except as is herein otherwise provided. If any such licensee is convicted of any offense under this act his license shall be immediately revoked, or in the discretion of the board suspended temporarily for a time to be determined by the board."

The above cited statute provides for punishment to "any person violating any of the provisions of this act." The act does not require counties to license liquor dealers. It permits the counties to license liquor establishments and sets a maximum limitation as to the fee which may be charged.

Counties are statutory subdivisions

Opinion No. 95

**Retail Liquor License Act—Licenses—
County Licenses—Failure to Obtain
License—Prosecution of Violators**

Held: Where a county has provided for a local license, as authorized by Section 4-430, Revised Codes of Montana, 1947, enforcement of the local license provision must be by virtue of Section 84-2703, Revised Codes of Montana, 1947.

June 16, 1952.

Mr. Roy W. Holmes
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of the state and can only act under the authority to be found in the statutes. (*Judith Basin County v. Livingston*, 89 Mont. 438, 298 Pac. 356). A county is a civil division of the state for political and judicial purposes. It does not possess the powers of local legislation and control and is limited to the enforcement of laws as promulgated by the state legislature. (*Yellowstone Packing and Provision Co. v. Hays*, 83 Mont. 1, 268 Pac. 555).

An ordinance, being legislative in nature, is beyond the power of a county. The legislature has specifically authorized a county to provide by resolution for the licensing of liquor establishments. In order to enforce a duly enacted resolution requiring such license, resort must be had to the remedy provided by the statutory law of the state.

The legislature has provided for the enforcement of the licensing powers granted to the counties. Section 84-2703, Revised Codes of Montana, 1947, states:

"Prosecution Of Persons Failing To Take Out License. Against any person required to take out a license who fails, neglects, or refuses to take out such license, or who carries on or attempts to carry on business without such license, the county treasurer must direct suit, in the name of the state of Montana as plaintiff, to be brought for the recovery of the license tax; and in such case either the treasurer or the county attorney must make the necessary affidavit for the writ of attachment, and such writ of attachment may issue without any bonds being given on behalf of the plaintiff; and in case of a recovery by the plaintiff, fifteen dollars damages must be added to the judgment and costs to be collected from the defendant. It shall be the duty of the board of county commissioners of the state examiner when examining the treasurer's report, to investigate if any persons are doing business in the county without a license, or if the amount of the license is insufficient. In either event the treasurer shall be officially notified, and thereafter shall be personally liable for such license or increase unless he promptly proceeds under this section or under 84-2707 to collect the same."

It is therefore my opinion that where a county has provided for a local license as authorized by Section 4-430, Revised Codes of Montana, 1947, enforcement of the local license provision must be by virtue of Section 84-2703, Revised Codes of Montana, 1947.

Very truly yours,
ARNOLD H. OLSEN
Attorney General